Supreme Court, U.S.
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Supreme Court of the United States
October Term, 1996

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Kevin P. Sweeney
(Petitioner)
v.
Mayor & City Council of Baltimore
(Respondent)

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On Petition For Writ of Certiorari
To the Court of Appeals of Maryland
(On Appeal from the Circuit Court)
(On Appeal From the District Court)

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PETITION FOR WRIT OF CERTIORARI

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Kevin P. Sweeney (pro se)
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40 pp

QUESTIONS PRESENTED

(Note: a brief argument for each question presented follows in "**ARGUMENT**" found under **REASONS FOR GRANTING THE PETITION** below; these questions are cross-matched to the corresponding argument with identical letters/numbers).

A. Did not Court of Appeals of Maryland violate Petitioner's Fourteenth Amendment right of "due process" (e.g. - "right to be heard") by:

(i) denying Petitioner his asserted defense?;

(ii) upholding the attempted compulsory exaction of an alleged tangible personal property tax by the Respondent from the Petitioner, this being repugnant to the Maryland Constitution Declaration of Rights, Article 15?;

(iii) upholding the attempted compulsory exaction of an alleged tangible personal property tax by Respondent from Petitioner, this being repugnant to the Maryland Constitution Declaration of Rights, Article 14?;

(iv) upholding the decision of the lower court/s in claiming jurisdiction when jurisdiction was non-existent for any or all of the following reasons:

a) No evidence of a statute

imposing the alleged tangible personal property tax was ever produced;

b) No evidence of the existence nor identification of the alleged taxable tangible personal property was ever produced;

c) No evidence that a lawful assessment was done was ever produced;

d) No evidence of the nature and qualities of the alleged property was produced;

e) No evidence of ownership of the alleged property was produced;

f) Since the Annotated Code of Maryland Tax-Property Article contains no definition of "Tangible Personal Property", as is admitted by the Dept. A/T and since the sovereign will of the Legislature leaves nothing to the discretion of others, aren't the alleged assessment and the alleged tax bill based upon it 'nullities'. (Thus leaving Respondent with no 'injury', no 'cause of action' and no 'standing'?; thus leaving the courts without jurisdiction?.)

g) To enter a judgment in favor of Respondent in the absence of evidence is arbitrary action.

B. Weren't Petitioner's rights as guaranteed by the Fourth, Fifth and Sixth Amendments to the Constitution of the United States violated?

C. Wasn't the alleged "requirement" to file the forms, which Respondent alleges Petitioner failed to file:

(iii)

(i) violative of Amendment 13 to the U.S. Constitution which prohibits "involuntary servitude"; and

(ii) violative of Amendment 5 to the U.S. Constitution and Declaration of Rights, Article 22 of the Maryland Constitution since to have such a requirement would be tantamount to compelling the filer of the forms to be a witness against himself.

D. Wasn't Petitioner's right of "due process" (specifically, his right to be heard) violated when Judge David B. Mitchell of the Circuit Court refused to even "address" the six MOTION(S) TO DISMISS WITH PREJUDICE FOR LACK OF JURISDICTION; because by this action Judge Mitchell denied to Petitioner his "right to be heard" before judgment was passed?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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OPINIONS BELOW

I. For cases from the federal courts: there were no federal courts involved.

II. For cases from the **state courts**:

i. The opinion (actually, only an ORDER) of the highest state court to review the merits appears in the Appendix to the petition, at page 31 and is unpublished.

ii. The opinion of the Circuit Court appears in the Appendix to the petition, at page 34 and is unpublished.

iii. The opinion of the District Court appears in the Appendix to the petition, at page 37 and is unpublished.

JURISDICTION

I. For cases from the federal courts: there were no federal courts involved.

II. For cases from the **state courts**:

i. The date on which the highest court of the state decided (actually, only denied CERTIORARI) my case, was July 24, 1996. A copy of that decision appears in the

Appendix at page 31.

ii. The date on which the RECONSIDERATION by the highest court of the state was denied was November 7, 1996. A copy of that decision appears in the Appendix at page 31.

iii. The date on which the Circuit Court decided the appeal of my case from the District Court was January 30, 1996. A copy of that decision appears in the Appendix at page 34.

iv. A timely 'MOTION TO ALTER OR AMEND' the decision entered in 'iii' immediately above was denied on the following date: March 12, 1996, and a copy of that decision appears in the Appendix at page 33.

v. Six timely 'MOTION TO DISMISS WITH PREJUDICE FOR LACK OF JURISDICTION' were filed with the Circuit Court, and, without even having been "addressed", were thereafter denied on the following date: May 28, 1996, and a copy of the order denying these motions appears in the Appendix at page 32.

vi. The date on which the District Court decided my case was January 13, 1995. A copy of that decision appears in the Appendix at page 37.

vii. A timely 'MOTION FOR A NEW TRIAL & MOTION TO ALTER OR AMEND' the decision of the District Court was denied on the following date: February 23, 1995, and a

copy of the order denying the motion appears in the Appendix at page 36.

viii. A timely MOTION TO VACATE THE JUDGMENT of the District Court was denied on February 7, 1995 and a copy of the order denying the motion appears in the Appendix at page 37.

ix. A timely MOTION FOR RECONSIDERATION of the decision of the District Court was denied on February 23, 1995 and a copy of the order denying the motion appears in the Appendix at page 35.

x. A timely MOTION TO DISMISS the judgment of the District Court was denied on January 4, 1995 and a copy of the order denying that motion appears in the Appendix at page 41.

xi. Three 'MOTION(S) TO DISMISS WITH PREJUDICE FOR LACK OF JURISDICTION' were submitted during the trial on January 13, 1995 but were not accepted nor considered by the judge.

The inherent duty and authority of the supreme Court to review this case is Article 6, Clause 2 of the Constitution of the United States.

The jurisdiction of this Court is invoked under 28 U.S.C. section 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. CONSTITUTION OF THE UNITED STATES OF AMERICA:

i. Article 6, Clause 2: This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

ii. Amendment 4: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

iii. Amendment 5: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just

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compensation.

iv. Amendment 6: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

v. Amendment 13, Section 1: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

vi. Amendment 14, Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

II. CONSTITUTION OF THE STATE OF MARYLAND:

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Declaration of Rights:

(i). Article 2: The Constitution of the United States, and the Laws made, or shall be made, in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States are, and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby; anything in the Constitution or Law of this State to the contrary notwithstanding.

(ii). Article 6: That all persons invested with the Legislative or Executive powers of Government are the trustees of the Public, and, as such accountable for their conduct: Wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the People may, and of right ought, to reform the old, or establish a new Government; the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive or the good and happiness of mankind.

(iii). Article 8: That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.

(iv). Article 14: That no aid charge, tax, burthen or fees ought to be rated or levied, under any pretense, without the consent of the Legislature.

(v). Article 15: That the levying of taxes by the poll is grievous and oppressive, and ought to be prohibited; that paupers ought not to be assessed for the support of the government; that the General Assembly shall, by uniform rules, provide for the separate assessment, classification and subclassification of land, improvements on land and personal property, as it may deem roper; and all taxes thereafter provided to believed by the State for the support of the general State Government, and by the Counties and by the City of Baltimore for their respective purposes, shall be uniform within each class of subclass of land, improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy; yet fines, duties or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community.

(vi). Article 19: That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without denial, and speedily without delay, according to the Law of the Land.

(vii). Article 20. That the trial of

facts, where they arise, is one of the greatest securities of the lives, liberties and estate of the People.

(viii). Article 21: That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

(ix). Article 22: That no man ought to be compelled to give evidence against himself in a criminal case.

(x). Article 23: In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction.

The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of five thousand dollars, shall be inviolably preserved.

(xi). Article 44: That the provisions of the Constitution of the United States, and of this State, apply, as well in time of war, as in time of peace; and any departure

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therefrom, or violation thereof, under the plea of necessity, or any other plea, is subversive of good Government, and tends to anarchy and despotism.

III. Statutory Provisions (Title-Section of the Tax-Property Article, Annotated Code of Maryland) [note: the first digit of the 'section' number is the "subtitle" referred to in the statutes.)

(A) **2-212. Same - Personal Property.**

(a) *Maintenance and arrangement of assessment records*.-Personal property assessment records shall be maintained and arranged in alphabetical order according to the owner by county, election district, taxing district, or assessment area.

(b) *Contents of records*.- Each record shall contain:

(1) a brief description of the nature of the personal property; and

(2) the value of the personal property.

(c) *Inspection of records*.- A personal property assessment record may be inspected only by:

(1) the property owner or the property taxpayer if different from the owner, for the personal property; or

(2) an officer of the State, a county, or a municipal corporation that is affected by the personal property assessment.

(B) **6-101. Property subject to tax.**

(a) *In general*.-(1) Except as

otherwise provided in this article, all property located in this State is subject to assessment and property tax and is taxable to the owner of the property.

(2) Property subject to assessment and tax under this article includes property owned or leased by the United States or any agency or department of the United States, to the fullest extent under the Constitution of the United States and the laws of the United States.

(b) *Intangible personal property.* ... [text not applicable to case]

(C) **8-417. Escaped property - Assessing of.**

(a) *Defined.*-In this section, 'escaped property' means any property that:

(1) is subject to assessment for property tax purposes; and

(2) has not been assessed.

(b) *When assessed.*-Notwithstanding section 8-418 of this subtitle, after it is discovered, escaped property is assessed in the same manner as other similar property assessed.

(c) *When taxed.*-(1) When escaped property is assessed it is placed on the assessment roll and tax roll and is subject to property tax for:

(i) the current taxable year; and

(ii) not more than 3 previous taxable years.

(2) The county tax imposition for each county or municipal corporation tax imposition for each municipal corporation

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shall be deemed to have covered all property that was not assessed but which should have been assessed for the year that any county or municipal corporation tax was imposed.

(d) *Inaccurately reported personal property.*-If personal property is assessed at less than its value as a result of the owner inaccurately reporting the cost or other information as to the property, the underassessed part of the property shall be treated as escaped property.

(D) **8-418. Escaped personal property - Penalty and notice.**

(a) *Determination made for penalty.* After any personal property that is subject to assessment by section 8-417(d) of this subtitle as escaped property is assessed, the Department or the supervisor shall determine if:

(1) the owner failed to report accurately the cost or other information as to the escaped property; and

(2) the failure to report accurately caused the escaped property to be assessed at less than its value.

(b) *Notice.* (1) Notice of the assessment of escaped property under section 8-417(d) of this subtitle and the imposition of any penalty under section 14-705 of this article shall be given as provided by section 14-402 of this article.

(2) The notice shall separately state:

(i) the assessment of the escaped property; and

(ii) the penalty imposed under section 14-705 of this article.

(E) **11-101. Annual report required for certain persons.**

(a) *Annual filing*. On or before April 15 of each year, a person shall submit a report on personal property to the Department if:

(1) the person is a domestic corporation;

(2) the person is a foreign corporation registered or qualified to do business in the State; or

(3) the person owns of during the preceding calendar year owned property that is subject to property tax.

(b) *Form and contents of report*.- The report shall:

(1) be in the form that the Department requires;

(2) be under oath as to Department requires; and

(3) contain the information that the Department requires.

(F) **14-401. Personal property valuation and assessment - Failure to submit report.**

(a) *Valuation and assessment*.- If a person fails to submit the reports required in section 11-101 or section 11-102 of this article, the Department or supervisor shall value the person's personal property based on any information the Department or supervisor can obtain and assess the personal property at no more than twice the estimated value.

(b) *Effect of assessment.*-An assessment under subsection (a) of this section does not excuse the person whose personal property is assessed from liability for:

(1) property tax or other tax; or

(2) a tax penalty or other penalty imposed by law.

(G) **14-402. Inaccurately reported personal property.**

If personal property is assessed at less than its value as a result of the owner inaccurately reporting the cost or other information as to the property, the underassessed part of the property shall be treated as escaped property under section 8-417 of this article.

(H) **14-504. Appealing notice of personal property assessment when assessment made by Department.**

(a) *In general.*-For personal property assessed by the Department, any taxpayer, a county, a municipal corporation, or the Attorney General may submit a written appeal to the Department as to a value or classification in a notice of assessment on or before 45 days from the date of the notice.

(b) *Hearing required.*-If the requirements of subsection (a) Of this section are met, the Department shall hold a hearing as provided under section 14-510 of this subtitle.

(I) **14-505. Petition for review of personal property assessed by the Department.**

(a) *in general.*-For personal

property assessed by the Department, the owner who reported cost or market information for the personal property to the Department but failed to report the information accurately may appeal the value or classification of the personal property set forth in the notice of assessment by submitting a petition for review to the /department if:

(1) the owner claims that the personal property is valued at a higher value than if the information had been reported accurately; and

(2) the appeal is made within 3 years of the date of the notice of assessment.

(J) **14-512. Appeals to Maryland Tax Court.**

(a) *From property tax determination by the Department*.-Any taxpayer, the governing body of a county, a municipal corporation, or the Attorney General may appeal a final action by the Department on an appeal under section 14-504 or section 14-404 of this subtitle to the Maryland Tax Court. The appeal shall be made on or before 30 days from:

(1) the date of the final action of the Department; or

(2) the earlier of the date of delivery or mailing of the notice of the final action to the address specified under section 14-507 of this subtitle, if a request is made under section 14-507 of this subtitle.

(b) through(f): [not applicable to this case]

(K) **14-704. Same - When annual report not submitted.** [note: "Same" refers to "Tax Penalty" used in the heading of the previous section]

(a) *in general.* (1) If the annual report is not submitted as required by section 11-101 of this article, the Department shall assess:

(i) an initial tax penalty not exceeding 1/10 of 1% of the total county assessment in all counties where property is located; and

(ii) an additional penalty of 2% of the initial tax penalty for each 30 days or fraction of a 30-day period that the report is not submitted.

(2) The initial penalty under paragraph (1) of this subsection may not be more than $500 or less than:

(i) $30 if 1 to 15 days late;

(ii) $40 if 16 to 30 days late; or

(iii) $50 if over 30 days late.

(b) and (c): [not applicable to this case]

(L) **14-705. Same - When inaccurate reported property assessed.**

If an escaped property assessment of personal property is made under section 8-417 of this article, an additional assessment penalty equal to 20% of the escaped property assessment shall be added to the assessment of the personal property.

(M) **14-865.Duty to request action.**

(a) *In general.*- Except as otherwise provided in subsection (b) of this section:

(1) if a tax under this article is not paid when due to the State, the Governor, the Comptroller, or the Treasurer shall request the Attorney General to institute an action against the person responsible for that tax; and

(2) if a tax under this article is not paid when due to a county or municipal corporation, the collector shall request the attorney for the county or municipal corporation to institute an action against the person responsible for that tax.

(b) *Exceptions*. [not applicable to this case]

(N) **14-866. Duty to initiate action; compromise of claim.**

(a) *Duty to initiate suit*.-If a request is made under section 14-865 of this subtitle, the Attorney General of attorney requested to initiate an action shall initiate the action.

(b) *Compromise* of claim. [not applicable to this case]

(O) **14-869. Judicial proceeding generally.**

(a) *Time of trial*.-If the plaintiff in an action under section 14-866 of this subtitle requests, the case shall be brought to trial as soon as the case is at issue, and shall have precedence over all other civil cases.

(P) **14-1005. Negligent failure to submit property tax report.**

A person who negligently fails to submit a property tax report as required under Title 11 of this article is guilty of a misdemeanor and on conviction is subject

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to a fine not exceeding $500.

(Q) **14-1006. Willful failure to submit property tax report.**

(a) *In general.*-A person who willfully or with intent to evade payment of property tax or to prevent the collection of property tax fails to submit a property tax report as required under Title 11 of this article is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $5,000 or imprisonment not exceeding 18 months or both.

(b) *Conviction not bar to perjury prosecution.*-A person who is convicted of a crime under subsection (a) of this section is also subject to prosecution for perjury.

(R) **14-1103.Same - Period of Property tax assessment.** [note: "Same" refers to "Limitation" as used in the heading of the previous section]

GENERAL REVISOR'S NOTE TO ARTICLE

Terminology:

It is a precept of the Commission to Revise the Annotated Code to revise the law in a clear, straightforward manner, and, once something is said, to say it the same way every time it is said. To that end, in revising this article, the Commission has conformed the language and organization of this article to that of other revised articles, to the extent that the former law allowed.

Throughout the former law, the

word "levy" was used in 4 different senses. It was used as a verb to mean imposing a tax and setting a tax rate. As a noun "levy" was used to mean the imposition of a tax and a lien against property. **To avoid confusion in this article, the more precise references to "imposing" a tax.** "setting" a tax rate, **"imposition" of a tax**, and "lien" **are used**. {emphasis added}

IV. Annotated Code of Maryland -
Maryland Rules

(A) **2-203**. As a footnote: "**Substance, not form, controls.** - The substance, not the form, of pleadings is the controlling consideration. Lapp v. Stanton 116 Md. 197, 81 A. 675 [1911]"

(B) **3-308. DEMAND FOR PROOF**

When defendant desires to raise an issue as to (1) the legal existence of a party, including a partnership or a corporation, (2) the capacity of a party to sue or be sued, (3) the authority of a party to sue or be sued in a representative capacity, (4) the averment of the execution of a written instrument, or (5) the averment of the ownership of a motor vehicle, the defendant shall do so by specific demand for proof. The demand may be made at any time before the trial is concluded. If not raised by specific demand for proof, these matters are admitted for the purpose of the pending action. Upon motion of a party upon whom a specific demand for proof is made, the court may continue the trial for a reasonable time to enable the party to obtain the demanded proof.

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(C) **7-113 (e) Oral Argument.** A party desiring oral argument shall request it in the memorandum or response under the heading "Request for Oral Argument". Unless oral argument is requested by a party or ordered by the circuit court, the appeal shall be decided without oral argument.

STATEMENT OF THE CASE

The following statement of facts of the case, material to the consideration of the questions presented, is intended to be concise; for practical reasons, Petitioner will also try to be brief (since this petition concerns an action that has been ongoing for over four years), and hence to be able to present a 'complete' picture is probably not realistic.

The whole scenario started when Petitioner received an **unsigned** letter from the State of Maryland Department of Assessments and Taxation (note: hereinafter abbreviated as "Dept A/T"). The letter made no allegations, assertions, presumptions, etc. in regards to petitioner; but it did request that a computer/word processor generated questionnaire relating to personal property be filled out and returned to Dept A/T. Not being aware of having any liability for the implied requirement to file any form/questionnaire or being liable for the implied personal property tax, Petitioner sent a letter to Dept A/T asking what laws, regulations, etc. made **HIM** liable to file any forms and/or pay a personal property tax. Petitioner received no response and sent a second letter asking for the same information. An extended series of back and forth letters followed, the matter being resolved to the satisfaction of neither party. The letters from Dept. A/T, bearing the name of Gary Duffy, Supervisor for Baltimore City, contained references to Annotated Code of Maryland, Tax-Property

Article, Sections 6-101,8-417, 8-418, 11-101, 14-402, 14-704, 14-705, 14-1005 and 14-1006. (See page xvi, items (B), (C), (D), (E), (G), (K), (L), (P), (Q)).

Meanwhile, Petitioner received a series of "Personal Property Tax" bills (see page 42, items xii) from the City of Baltimore Department of Finance (note: hereinafter abbreviated as Dept Fin). [**PETITIONER DESIRES THAT IT BE WELL NOTED THAT THE BILLS WERE FOR AN ALLEGED CITY OF BALTIMORE TAX; THEY WERE NOT FOR A STATE OF MARYLAND TAX**] Not being aware of having any liability for a Personal Property Tax, Petitioner sent a letter to Dept Fin asking to be informed of what statute, regulation, etc, made **HIM** liable for the tax for which the bills were sent. Petitioner received no response and sent a second letter asking for the same information. Dept Fin responded but the letter, from Martha Dixon, Collection Supervisor, contained no answers from Dept Fin itself; only copies of five letters previously sent to Petitioner by Dept A/T and a statement that those letters answered my questions. Since the copies of those letters only contained the same information as the original letters from Dept A/T and hence did not answer Petitioner's questions, Petitioner sent another letter to Dept Fin asking to be informed of what law, regulation, etc. made **HIM** liable for the alleged tax bill. No further response from Dept Fin was received.

Subsequently, Petitioner received a letter indicating that he was being sued by

Respondent and sent a timely "Notice of Intention to Defend". (See Appendix, page 41, xi). (NOTE: Within this "Notice of Intention To Defend", Petitioner first raised the issues of "due process", "unconstitutional", "illegal", "no notice" etc.)

A hearing in District Court took place on November 16, 1994 before Judge Shuger. Petitioner submitted a MOTION TO DISMISS WITH PREJUDICE FOR LACK OF JURISDICTION which included material relating to the original pleading of Respondent being defective, material relating to Respondent having made a claim upon which no relief could be granted, material relating to Petitioner not having received proper notice and that no statute imposing the alleged tax had been identified. Further proceedings were postponed till January 13, 1995. Approximately 4 days before that hearing date Petitioner received a notice that his MOTION TO DISMISS was denied by Judge Shuger. However, nowhere in the denial was there identified a statute imposing the alleged tax . At the outset of the hearing on January 13, 1996, Petitioner registered his objection to the denial of his MOTION TO DISMISS and then submitted a MOTION FOR DEMAND FOR PROOF wherein, in addition to other items, he specifically demanded to have identified the law "imposing" the alleged tax. Counsel for Respondent, Mr. John Clark Mayden, immediately objected saying that such a motion should have been submitted long before that time. Judge

Sweeney, the presiding judge, picked up on the objection saying that such a motion should have been submitted long before this; it should have been submitted at the beginning of the trial. Petitioner tried to state that under Rule 3-308 (See page XXY, item IV,(B)) such a motion may be made at any time before the trial is concluded but was cut off by Judge Sweeney who repeated her earlier statements. Petitioner said that was incorrect and then recited that rule. Judge Sweeney thereupon asked what rule Petitioner was referring to, opened her copy of the rule book and read Rule 3-308. Seeing that it stated "The demand may be made at any time before the trial is concluded." said " Well, I'll admit it into the record but I'm not going to rule on it". Mr. Mayden presented Respondent's case which in essence amounted to nothing more than Mr. Duffy testifying that the Dept. A/T had sent "Notice(s) of Assessment" to Petitioner and presenting into evidence copies of "Personal Property Tax" bills for the four years in question (referred to above; page 42, item xii) and testimony by Ms. Dixon relating thereto. Nothing relating to a statute imposing the alleged tax was entered into the record. Nothing relating to the validity and lawfulness of the bills was entered into the record. Nothing establishing a "liability" upon Petitioner for the claimed tax indebtedness was entered into the record. Nothing establishing the very existence of any taxable personal property was entered into the record. Nothing establishing the

lawfulness of the alleged assessments was entered into the record. Mr. Mayden stated that he had concluded his presentation. Since nothing had been entered into the record which would establish that there existed any liability on the part of Petitioner for any tax, and hence Respondent was without a 'Cause of Action', Petitioner attempted to submit a MOTION TO DISMISS WITH PREJUDICE FOR LACK OF JURISDICTION. This motion was not accepted nor entertained for consideration by Judge Sweeney. Petitioner tried to present his defense which was based upon the principles that the alleged assessment(s) and/or the alleged tax bills were not pursuant to a statute, were unlawful, were invalid and were nullities. Judge Sweeney did not allow for any such defense stating " Any issue dealing with the validity of that assessment is not for here. It should already have been dealt with, and I think that's what Mr. Sweeney's trying to do. And I don't have the authority to do that." Judge Sweeney also stated that Petitioner had other jurisdictions to go to, from Tax Court on up. Petitioner tried to explain that the Tax Court was not a **legally** viable place for Petitioner to present his case/position since the Tax Court is an administrative body only and as such is incompetent to rule on questions of law, which was Petitioner's defense; and that the judicial courts were the proper place for such contentions and considerations/rulings. Judge Sweeney would hear none of it. Still, Petitioner elicited testimony from Mr. Duffy that he admitted (1) that the Dept. A/T had

no list nor valuation of the alleged personal property, (2) that The Dept A/T did not know for a fact that any taxable personal property even existed, (3) that the personal property at the address of the alleged taxable personal property "Based on the evidence, there was reason to believe it could be" property in a residence, and thus, by statute, was exempt from taxation, and 4) that during the investigation conducted by the Dept A/T, the investigator **found no taxable personal property**. Petitioner verbally moved the Court to Dismiss With Prejudice for Lack of Jurisdiction, citing the highest court in Marvland, Susquehanna Power Company v. State Tax Commission, 159 Md 334,358{1930} that anything that is capricious and whimsical in nature is not an assessment at all and becomes reviewable as a matter of law. Judge Sweeney responded "Not here it doesn't". Petitioner pointed out that the highest Court in the state did so rule. Judge Sweeney responded "This is not ... that's something that should have been raised in the Tax Court". Judge Sweeney entered a judgment in favor of Respondent. (see page 37, item ix). Petitioner entered his objection. Petitioner filed several post-trial motions (e.g. - alter/amend, new trial, reconsideration, etc) all of which were denied. (see page 35, items vi, vii, viii.) Petitioner also filed a MOTION TO DISMISS WITH PREJUDICE FOR LACK OF JURISDICTION based upon the allegation that the attempted exaction of the alleged tax was repugnant to the

Maryland Constitution. Copies of Petitioner's paid **REAL** property tax bills were submitted as exhibits with the motion. (see page 43, xiii). Also submitted as an exhibit with this motion was a side-by-side listing of each of the sections dealing with property taxes from the four constitutions that have existed for the State of Maryland. This motion was denied. (see page 37, item viii) Petitioner filed a timely NOTICE OF INTENTION TO APPEAL to the Circuit Court. A hearing was held on January 30, 1996. The presiding judge, Judge Hennegan, stated that since there had not been a request for oral argument that the appeal would be decided by the Court without oral argument. Petitioner pointed out to Judge Hennegan that a "Request for Oral Argument" **had** been submitted and proceeded to read his copy into the record. Judge Hennegan still did not grant oral argument stating that he had no record of such a request and "It's not in the body and it has to be filed on a separate pleading. (see Rule 7-113(e); page xxvi, item (c)) Judge Hennegan affirmed the decision of the lower court. (see page 34, item v) Petitioner registered his objection. Petitioner filed a timely MOTION TO ALTER OR AMEND JUDGMENT. This motion was denied. (see page 33, item iv) Not having been allowed oral argument, in order to have some opportunity to present his defense and be heard, Petitioner also filed six separate, timely MOTION(s) TO DISMISS WITH PREJUDICE FOR LACK OF JURISDICTION. These motions were not even addressed by the

court. In the MEMORANDUM OPINION AND ORDER, Judge David B. Mitchell stated "It is unnecessary for the Court to address the substance of these several motions to dismiss. *** There is no longer a case or controversy before the court that requires adjudication. The motions are moot.". (see page 32, item iii). Petitioner filed a timely PETITION FOR WRIT OF CERTIORARI to the Court of Appeals. This petition was denied. (see Appendix 31, item i). A timely MOTION FOR RECONSIDERATION was filed. This motion for reconsideration was denied. (see page 31, ii). This PETITION FOR WRIT OF CERTIORARI to the supreme Court follows.

REASON FOR GRANTING THE PETITION

(A) Petitioner finds it incomprehensible that the case against him, which is totally lacking a basis in both law and fact, has climbed the judicial ladder to reach the level of the supreme Court. For this to have happened, not only have members of administrative agencies of Maryland had to exceed the limits of their authority, but the members of the Maryland judiciary associated with this case have had to either completely ignore their duties and responsibilities and oaths of office or be totally ignorant and incompetent in regards to the same. It is inconceivable to Petitioner that the highest court of any State could pass over important, compelling

issues such as 'constitutionality' questions with the short, curt statement that "there has been no showing that review by certiorari is desirable and in the public interest." Petitioner prays that the present members of the supreme Court will not shirk their duties and thereby join the ranks of their brother jurists of the Courts below but instead will uphold their oath of office and preserve the integrity of the supreme Court and will uphold the very foundation of the United States -- its Constitution.

Petitioner will present to the Court uncontested facts, **ADMITTED** facts, well established legal principles and prior decisions of the supreme Court upon which the Court may base its decision. Thus, to reverse the decision of the lower court, this Court need not substitute its judgment for that of the lower court; rather, the only thing to be done is to apply well established legal principles to the equally well established and admitted facts.

(B) Petitioner alleges that review is necessary, in the public interest and compelling in nature; the 'compelling nature' being the preservation of the integrity of the provisions of the U.S. Constitution and the Maryland State Constitution. The supreme Court agrees with this. In *Miranda v. Arizona* 384 U.S. 436, 459 {1966}:

> " 'Those who framed our Constitution and the Bill of Rights were ever aware

of subtle encroachments on individual liberty. They knew that "illegitimate and unconstitutional practices get their first footing ... by silent approaches and slight deviations from legal modes of procedure.'
Boyd v. United States, 116 U.S. 616, 635 (1886)."
Continuing at page 480:
" 'In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means ... would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.' *Olmstead v. United States, 277 U. S. 438, 485 (1928)*"

The duty to protect every right secured by the Constitution of the United States also rests upon the state courts. As stated in *Robb v. Connolly* 111 U.S. 624, 637 {1884}:

"Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured

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by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them. ***. If they fail therein, and withhold or deny rights, privileges, or immunities secured by the Constitution and laws of the United States, **the party aggrieved may bring the case from the highest court of the State in which the question could be decided to this court for final conclusive determination.**" (emphasis added).

Petitioner relies upon these well stated and well founded principles to "Petition" this Court.

Petitioner alleges that there is no more compelling reason than the enforcement of the provisions of the Constitution of the United States. (Specifically for this case: Article 6, Clause 2; and the Fourth, Fifth, Sixth, Thirteenth and Fourteenth Amendments.) Thus, Petitioner alleges that the Court of Appeals of Maryland, the court of last resort in the state, has:

(i) decided numerous issues concerning the provisions of the Constitution of the United States, in a way that directly conflict with relevant decisions of the supreme Court. (This is so by the decision of the Court to deny Petitioner's state PETITION FOR WRIT OF CERTIORARI thus giving tacit approval to numerous decisions and actions of both the lower courts and administrative agencies of the state which

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are in conflict with relevant decisions of the supreme Court.)

(ii) allowed to stand numerous decisions and actions of the lower courts of Maryland which are in direct conflict with previous decisions made by the Court of Appeals itself. This violates the constitutionally protected principles of "due process of law" and "equal treatment under the law".

(C) Petitioner will attempt to provide concise, but brief, "**ARGUMENTS**" in support of his contentions, realizing that a "complete" argument within the confines of this petition is not possible nor practical. These arguments are `cross-matched´ by the identical number/letter, to the corresponding "QUESTIONS PRESENTED" above. The arguments are to be found below, after the heading, **ARGUMENTS**.

PETITIONER STIPULATES THAT HE IS NOT, AND HAS NEVER ADMITTED BEING, A TAXPAYER IN REGARDS TO THIS CASE. IT IS INCONCEIVABLE TO PETITIONER THAT IN THE ABSENCE OF A VALID, CONSTITUTIONAL LAW WHICH WOULD ESTABLISH PETITIONER AS A TAXPAYER HE COULD BE CONSIDERED AND TREATED AS SUCH. SEVERAL REFERENCES (WHICH INCLUDE THE WORD "TAXPAYER") TO ADJUDICATED CASES AND SECTIONS OF THE ANNOTATED CODE OF MARYLAND, TAX-PROPERTY ARTICLE HAVE BEEN CITED IN THIS `PETITION FOR WRIT OF CERTIORARI´. THESE ARE NOT TO BE CONSTRUED AS AN ADMISSION OR BASIS FOR PETITIONER TO BE CONSIDERED A TAXPAYER. THEY WOULD HAVE FORCE/VALUE IF AND ONLY IF BY SOME ABERRANT STRETCH OF

LOGIC AND JUSTICE PETITIONER IS CONSIDERED TO BE A TAXPAYER.

(D) It is Petitioner's intent to have this PETITION FOR WRIT OF CERTIORARI granted and requests this honorable Court to grant the widest leeway possible in regards to Petitioner's pleading since he is a *pro se* litigant. As justification for this request, Petitioner cites *Haines v. Kerner*, 404 US 519, 520 {1972}:

> " We cannot say with assurance that under the allegations of the *pro se* complaint, which **we hold to less stringent standards than the formal pleading drafted by lawyers** ***". (emphasis added; bold letters).

Petitioner stipulates that he has tried to exercise due diligence to the best of his ability in presenting this Petition and in trying to comply with the rules of the Court.

(E) Petitioner believes that this Honorable Court can quickly and easily dispose of this Petition by reaching an affirmative decision to grant the Petition if it does nothing more than read question 'A (iii)' of the **QUESTIONS PRESENTED** (found at page i) and then reading the **ARGUMENT** relating to it. (found at page 17). Petitioner respectfully makes this statement in an effort to save the members of this Court unnecessary time and effort in reading and analyzing this entire PETITION,

Petitioner being respectful and mindful of the demands and time constraints placed on the Court.

ARGUMENTS

A. (i) The Court of Appeals of Maryland has ruled that an asserted defense that a plaintiff's claim was based upon something "unlawful" or "unconstitutional" or that the actions/decisions of an administrative agency were "arbitrary" was a valid defense and reviewable as a matter of law.

> "We, therefore, conclude **appellant is not precluded** by this Court's previous decisions or the provisions of sec. 209 **from offering as a defense the invalidity, or lack, of a levy or the invalidity or unconstitutionality** ...". *Casey Dev. Corp v. Mont. County* 212 Md 138, 146 (1956).
>
> Also:
>
> "However, the decisions of the board are reviewable, not only when there has been an erroneous interpretation of the law, but also when they impair personal or property rights by reason of an arbitrary or unlawful exercise of discretion." *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296, 304 {1946}.

Yet when Petitioner asserted these contentions as a defense, they were ignored by the judge. Judge Kathleen M. Sweeney, the

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presiding judge in the District Court of Maryland where the initial proceedings of this case took place stated: "I don't have the authority to go behind at this point" and "Sir, that was for Tax Court. If you are contesting the figure or anything wrong with the assessment, that was something to be raised in the Tax Court, but not here." and "Any issue dealing with the validity of that assessment is not for here.". Judge Sweeney's contention that Petitioner should have taken his cause to the Tax Court is unfounded. There are two simple reasons why Petitioner states this. First: Tax Court is an administrative body only. It is incompetent to rule on questions of law. Since petitioner's asserted defenses all involve questions of law, Tax Court is not a legally viable option. Second: Petitioner has not been shown to be a 'taxpayer'; and the Tax-Property Article of the Annotated Code of Maryland, sections 14-504, 14-505 and 14-512, the sections dealing with "appealing" assessments, only allow for appeal by a "taxpayer" or specified governmental actors. The proper principle is stated in *Botta v. Scanlon* 288 Fed. 2nd 504, 508 {1961}:

> "It is equally well settled [sic] that the Revenue laws relate only to taxpayers. **No procedure is prescribed for a nontaxpayer ***. His remedy would be to ge into a court of competent jurisdiction ***.**" (emphasis added)

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Petitioner was denied his right to be "heard". Let the words of Maryland's highest Court provide the basis for Petitioner's argument: as stated in *J. B. Corporation v. Fowler*, 258 Md 432,435 [1970], (quoting from Ryan v. Johnson, 220 Md 70) -

> "**We think that the asserted defense that the payments were gifts, if substantiated, would constitute a valid and meritorious defense. *** Since the trial court appears to have proceeded upon a contrary view of what would constitute a valid defense, we think that the denial of an opportunity to present the defense here asserted resulted in an abuse of the court's discretion** ..." (pertinent part emphasized)

As can be seen from the quotes from the cites above, it is painfully obvious to Petitioner that Petitioner's asserted defenses should have been allowed, heard and considered. They weren't. Therefore, Petitioner alleges he was denied "due process of law".

(ii) For over 200 years, every Maryland Constitution, from the first one in November 1776 to the present one, has contained a provision that each person should pay for the legitimate cost of government based upon "his actual worth in real <u>OR</u> personal property". (emphasis added). This provision was originally in Maryland Constitution Declaration of Rights, Article 13; now in

Declaration of Rights Article 15. (see page xiv, item 'v') [NOTE: Although the phrase "*** his actual worth in real or personal property." is omitted from present day write-ups of Maryland Constitution, the language was not deleted. A proposed amendment to the Maryland Constitution must be read into the record of the Legislature on three separate occasions. During the required readings that altered the verbiage of this section, the phrase was present and entered into the record.) Petitioner has demonstrated, by submitting to the District Court paid real property tax bills (see page 43, item xiii) for the years pertaining to the alleged personal property tax liability, that he has met his constitutional obligation for the support of the government. Thus, the attempted exaction of a personal property tax is repugnant to that Article. Therefore, Petitioner alleges he was denied "due process of law".

(iii) First: **Respondent is attempting to justify a City of Baltimore tax with a State of Maryland statute**. Such an attempted justification is ludicrous and preposterous. The law of one jurisdiction cannot be made the enforcing statute of another jurisdiction. This is evidenced by;

1. The Constitution of Maryland Declaration of Rights Article 15. It states: "*and all taxes thereafter provided to be levied by the State for the support of the general State Government*, and by the Counties and by the City of Baltimore for their respective purposes ***". (delineation

by type-face change added) How much clearer can it be? The State taxes for State purposes and the City taxes for City purposes.

2. The Department of Assessments and Taxation of the State of Maryland has a pamphlet entitled "Assessment and Taxation of Business Personal Property". The very first sentence states: "In Maryland there is a tax on business owned personal property **WHICH IS IMPOSED AND COLLECTED BY THE LOCAL GOVERNMENTS**". (emphasis added) The Department itself admits that the tax is imposed by the local government; in this case the City of Baltimore.

3. In the Governor of Maryland's "Message" to the General Assembly of Maryland at its regular session, January, 1914 he stated: "This power to tax **given to the several local political subdivisions for local purposes** should be exercised in all cases upon a basis of value established by the State." (emphasis added)

Although Petitioner has stated it once, it bears repeating: Attempting to justify a City of Baltimore tax with a State of Maryland statute is ludicrous and preposterous.

Second: Despite Petitioner's repeated and continuous requests to have identified the statute(s) which impose(s) a tax liability upon him, none has been identified. In the absence of such a law there is no tax. (see page xiv. item 'iv') During the proceedings in the District Court, it was offered by Mr.Duffy, and

accepted by the District Court, that Maryland Annotated Code, Tax-Property Article, Sect. 6-101 is the "law" that "imposes" the alleged tax. During the proceedings, this was the only statute identified which was claimed to be the statute that "imposed" the alleged tax. (Note: This section is the only law that either, and both, Dept. A/T and Dept. Fin offered in their letters of response to Petitioner's question concerning what law imposed the alleged tax.) However, Sect. 6-101 does not conform to the 'intent' of the Commission to Revise the Annotated Code. (see page xxiv, item 'R'). That is, it does no state that a tax is "imposed"; it says "is subject to". As this Court stated in *Barrett v. Van Pelt*, 265 U.S. 85,90 {1925}:

> " The intention of the lawmaker constitutes the law. Stewart v. Kahn, 11 Wall. 493, 504, 20 L. Ed. 176. See Smythe v. Fiske, 23 Wall. 374, 380, 23 L. Ed. 47."

The Court of Appeals of Maryland, in *Secretary of State v. Bryson*, 244 Md. 418, 425 {1966} concurs:

> "If the language is plain and free of ambiguity and has a definite and sensible meaning, it is conclusively presumed to be the meaning of the Legislature in enacting the statute."

The Court of Appeals of Maryland, in *Town of Somerset v. Montgomery County Board of Appeals*, 245 Md. 52, 71 {1966}, uses the exact same language as above but then

immediately states:

> "courts should not attempt, under the guise of construction, to supply possible omissions or to remedy possible defects."

The "intention" of the legislature of Maryland is plainly and clearly stated in the Annotated Code itself; and the court of last resort in the state of Maryland admits that the courts, ALL COURTS, are powerless to do anything but to accept, and apply, that intent.

For the District Court of Maryland to hold, and for the Circuit Court of Maryland to affirm, and for the Court of Appeals of Maryland to tacitly uphold, that Section 6-101 "imposes" the alleged tax is completely unfounded in law and fact and is total fraud. Any alleged tax based thereon CANNOT be sustained. Therefore, Petitioner alleges he was denied "due process of law".

(iv) a), b), c), d) and e). The supreme Court has stated:

> "... an assessment consists in the two processes of *listing* the persons, property, &c, to be taxed and of estimating the sums which are to be the guide in an apportionment of the tax. ...Taxation by valuation cannot be apportioned without it." *People v. Weaver*, 100 Sup. Ct. 539, 545 {1879}.

The Court of Appeals of Maryland uses

the identical language but then continues:

> "... an assessment consists in the two processes of *listing* the persons, property, &c, to be taxed and of estimating the sums which are to be the guide in an apportionment of the tax. ...Taxes by valuation cannot be apportioned without an assessment. 'Without an assessment they have no support, and are nullities.'" (emphasis, the Court) *Consolidated Gas Company v. Mayor and City Council of Baltimore*, 101 Md 541 [1905]

The Dept A/T admits that it has no such listing and valuation. Thus the alleged assessment does not meet the requirements of an "assessment" and is a nullity as is the alleged tax which was based upon it.

The Dept. A/T admits that it has **no knowledge** of the existence of the alleged taxable personal property. The Dept. A/T further admits that upon direct investigation, **its own investigator found no taxable property.** It necessarily follows that the Dept A/T has no knowledge of the nature of the alleged property, nor its qualities, nor its value, nor the status of the ownership of the alleged property.

> "...we may properly say that in any determination which may be made by the Appeal Tax Court it will be *essential* to consider the nature and qualities of the thing to be assessed." *Consolidated Gas Company v. Mayor and City Council of Baltimore* 105 Md 43,61 [1907] (italics added)

> " Indeed, the assessment could not be legally made at all until the names of the owners had been ascertained,...". *Tasker v. Garrett County* 82 Md 150,154 [1895].

Hence, the alleged assessment, being "arbitrary", "capricious and whimsical", according to the Maryland Court of Appeals (in *Susquehanna Power Company v. State Tax Commissioner*, 159 Md 334,358 [1930]) is not an assessment at all and is therefore a nullity.

The Dept. A/T admits that there was evidence to believe that any personal property existing at the location of the alleged taxable personal property was in a residence, and thus, by statute, exempt from assessment and taxation. Petitioner presumes that this doubt should have precluded the Dept A/T from doing the alleged assessment. Petitioner also presumes that this doubt should have precluded the lower Court(s) from entering judgment against Petitioner.

> "Doubts must be resolved against the Government and in favor of [alleged] taxpayers." *Miller v. Nut Margarine Company*, 284 U.S. 498,508 {1932}.

This being so, Petitioner alleges that the alleged assessment, the alleged tax based upon it and the ruling(s) of the lower Courts should be considered as nullities. Petitioner further alleges that because of these improprieties he was denied "due

process of law".

f) It is uncontested by Dept. A/T that the An. Code, Tax-Property Article does not contain a definition of "tangible personal property". (Specifically, the response from the Department was "This information does not exist.".) (NOTE: The legislature of Maryland **HAS DEFINED** "real property". Question: Has the legislature not defined "tangible personal property" because it has elected to tax "real property"; and hence by the limitation of the Maryland Constitution allowing taxation of "real **or** personal property" the legislature is prohibited from taxing 'personal property" and thus there is no reason to define "personal property"?) The highest Court in Maryland, in *Mayor and City Council of Baltimore v. Baltimore and Ohio Railroad*, 6 Gill 288, 292, (1848), stated:

> "...the rigid principles of taxation..." are "... the sovereign will of the legislature, acting constitutionally **governs and commands every thing, leaving nothing to the discretion of others.**". (emphasis added) (NOTE: That statement of the Court merely rephrases the principle put forth in the Maryland Constitution Declaration of Rights Article 8, which states: "That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or

discharge the duties of any other.")

Since the legislature of the State of Maryland has not defined "tangible personal property" (as is admitted by the Dept A/T), according to the highest court in Maryland, it is not within the discretion of the Petitioner nor the Department of Assessment and Taxation nor the City of Baltimore Department of Finance nor any Court nor "Webster's Dictionary" nor anyone else (except the legislature) to determine what is "tangible personal property". Legally, "tangible personal property" does not exist. Consequently nothing can be held to be "taxable" as tangible personal property.

Taking all of the above into consideration, Petitioner alleges: 1) the alleged assessment supposedly done by the Dept A/T must be a nullity;

2) the tax bill generated by the City of Baltimore Department of Finance must be a nullity since it is calculated on a null assessment;

3) since the tax bill must be a nullity, no tax liability on the part of the Petitioner to the Respondent exists;

4) in the absence of such a liability, Respondent is not injured;

5) "The plaintiffs are not shown to be injured, and they have no standing in this Court. Baltimore v. Keyser 72 Md 108" *Wells v. Hyattsville* 77 Md 125, 132 [1893];

6) in the absence of standing on the part of the Respondent, the Court has no jurisdiction.

The supreme Court has stated:

> "The first question is necessarily that of jurisdiction;... without jurisdiction the court cannot proceed at all in any case. Jurisdiction is the power to declare the law, and when it ceases to exist, **the only function remaining to the court is that of announcing the fact and dismissing the cause.**" *Ex Parte McCardle*, 74 US (7 Wall.) 506 [1869]. (emphasis added)

g) taking all of the above arguments into consideration, Petitioner feels that the principle stated by the Court of Appeals of Maryland in *Heaps v. Cobb* 185 Md. 372,378 [1945] applies to this case. That is: "To refuse to consider evidence or to make an essential finding without supporting evidence is arbitrary action." Accordingly, Petitioner alleges that his right of "due process´ was violated.

B. Petitioner alleges that Respondent´s case, which includes the attempted collection of a `penalty´ (which is combined with `interest´ on the bills), "*** though technically a civil proceeding, is in substance and effect a criminal one.". *Boyd v. U.S.*, 116 US 616, 634 {1886}.

Therefore, Petitioner alleges that the alleged `requirement´ to file certain forms is violative of his rights as secured by the Fourth and Fifth Amendments to the Constitution of the United States and

further alleges that the proceedings of his alleged trial did not meet the standards as required and secured by those same amendments. It would seem that the supreme Court agrees.

> "As, therefore, suits for penalties and forfeitures incurred by the commission of offences against the law, are of the quasi-criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution, and of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself; and we are further of opinion that a compulsory production of the private books and papers of the owner of goods sought to be forfeited in such a suit is compelling him to be a witness against himself, within the meaning of the Fifth Amendment to the Constitution, and is the equivalent of a search and seizure - and an unreasonable search and seizure - within the meaning of the Fourth Amendment. Though the proceedings in question divest of many of the aggravating incidents of actual search and seizure, yet, as before said, it contains their substance and essence, and effects their substantial purpose. It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate

> and unconstitutional practices get their footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*." *Boyd v. United States* 166 U.S. 616, 634 (1886)

C). Petitioner alleges that the alleged "requirement" to file the forms, which Respondent alleges Petitioner failed to file, if in fact was applicable to Petitioner as the result of a bona fide statute:

(i) is violative of Amendment 13 to the U.S. Constitution (text: see page xii, item 'v') which prohibits "involuntary servitude" since the allegedly required involuntary filing of forms is not as a punishment for a crime whereof he shall have been duly convicted; and

(ii) is violative of Amendment 5 to the U.S. Constitution and Declaration of Rights, Article 22 of the Maryland

Constitution since to have such a requirement would be tantamount to "*** compelling [the filer of the forms] to be a witness against himself". (see *Boyd v. U.S.*, supra.)

(D) Questions of jurisdiction can arise and/or be presented **AT ANY TIME**; for if the court lacked jurisdiction then its decision and/or opinion and/or judgment would be a nullity. The supreme Court has stated:

> "The first question is necessarily that of jurisdiction; ... without jurisdiction the court cannot proceed at all in any case. Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex Parte McCardle*, 74 U.S. (7 Wall.) 506 !869}.

The supreme Court has stated:

> "A defendant who has been denied an opportunity to be heard in his defense has lost something indispensable." *Snyder v. Mass*, 291 U.S. 97,116 {1932}.

Judge Mitchell admits to not even "addressing" Petitioner's six separate MOTION(S) TO DISMISS. These motions each attacked the claimed jurisdiction of the court and contained newly submitted assertions and allegations for the court to

consider and decide on. Therefore, since these motions concerned the question of jurisdiction, which can be challenged at any time, and since these pleading were never even addressed, Petitioner alleges that he has lost something indispensable and further alleges he has been denied his right to be heard. (i.e.-his "due process of law)

"If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given." *Morgan v. United States* 298 U.S. 468, 480 (1936)

SUMMARY

Petitioner has shown that the Respondent has failed to produce: 1) a statute which imposes the alleged tax, 2) a lawful assessment, 3) a lawful "notice". To paraphrase the Court: 1. the silence of the books acts as a bar against him. (*Boyd v. U.S.*, 116 U.S. 616, 627 (1885)) 2. The Court will protect itself. Aid is **DENIED** to he who comes with **UNCLEAN HANDS**. (*Olmstead v. U.S.* 277 U.S. 438 (1928)).

"*** we are not to be bound by findings wholly lacking support in evidence." *Culombe v. Connecticut* 367 U.S. 568, 603 (1961).

Petitioner has also shown that the proceedings against him are violative of several provisions of the Constitution of

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the United States.

> "While we must have proper regard to this ruling of the state court in relation to its appellate procedure, we cannot ignore the exceptional features of the present case. An important question under the Federal Constitution was involved, and, from that standpoint, the case did not stand alone...
>
> "... We are not satisfied that the court would have dealt with the case in the same way if it had determined the constitutional question as we have determined it....
>
> "We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires." *Williams v. Georgia* 349 U.S. 375, 389 [1955}.

CONCLUSION

The supreme Court should reverse the decision of the lower court and issue an ORDER dismissing the case with prejudice with a finding of lack of substantial justification.

APPENDIX

i.

KEVIN P. SWEENEY
Appellant-Defendant

v.

MAYOR AND CITY COUNCIL OF BALTIMORE
Appellee-Plaintiff

Petition Docket No. 90, September Term, 1996

State of Maryland Court of Appeals

July 24, 1996

[Opinion/Order of Court of Appeals (denying PETITION FOR WRIT OF CERTIORARI)]:

"Upon consideration of the petition for a writ of certiorari to the Circuit Court for Baltimore City, in the Above entitled case, it is **ORDERED**, by the Court of Appeal of Maryland, that the petition be and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest."

ii.

KEVIN P. SWEENEY
Appellant-Defendant

v.

MAYOR AND CITY COUNCIL OF BALTIMORE
Appellee-Plaintiff

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Petition Docket No. 90, September Term, 1996

State of Maryland Court of Appeals

November 7, 1996

[ORDER denying "reconsideration"]:

"The Court having considered the motion for reconsideration in the above-entitled case, it is ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby, DENIED."

iii. **KEVIN P. SWEENEY**
Appellant-Defendant

v.

MAYOR AND CITY COUNCIL OF BALTIMORE
Appellee-Plaintiff

Case No. 95304036/CL204018

State of Maryland Circuit Court

May 28, 1996

[MEMORANDUM OPINION AND ORDER (in reference to Petitioner's six MOTION(S) TO DISMISS WITH PREJUDICE FOR LACK OF JURISDICTION)]

"Kevin P. Sweeney, Appellant, has filed six motions to dismiss the litigation pending before the court. This case is an appeal from the judgment of the District

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Court. That court imposed a judgment in favor of Appellee and Appellant instituted this appeal.

It is unnecessary for the Court to address the substance of these several motions to dismiss. Each was filed on or about April 11, 1996. The Court, t\in the person of Judge A. Owen Hennegan, issued a written *OPINION AND ORDER* on January 30, 1996. Therein, Judge Hennegan affirmed to judgment of the District Court. There is no longer a case or controversy before the court that requires adjudication. The motions are moot.

iv. **KEVIN P. SWEENEY**
Appellant-Defendant

v.

MAYOR AND CITY COUNCIL OF BALTIMORE
Appellee-Plaintiff

Case No. 95304036/CL204018

State of Maryland Circuit Court

March 12, 1996

[ORDER (denying petitioner's MOTION TO ALTER OR AMEND JUDGMENT):

"Upon consideration of Defendant/Appellant's MOTION TO ALTER OR AMEND JUDGMENT, it is this 12th day of March, 1996, by the undersigned judge of the

Circuit Court for Baltimore City ORDERED that the MOTION TO ALTER OR AMEND JUDGMENT be and is hereby DENIED."

v. **KEVIN P. SWEENEY**
Appellant-Defendant

v.

MAYOR AND CITY COUNCIL OF BALTIMORE
Appellee-Plaintiff

Case No. 95304036/CL204018

State of Maryland Circuit Court

January 30, 1996

[OPINION AND ORDER (affirming the decision of the District Court)]:

"This is an appeal on the record from a judgment of the District Court of Maryland (J. Kathleen Sweeney) in favor of the Mayor and City Council of Baltimore (City) for personal property taxes due and owing by the appellant Kevin P. Sweeney (Sweeney) in the amount of $17, 706.00 and costs of $18.00.

"This court has reviewed the entire record of the proceeding below including all exhibits, most of which consisted of correspondence between the City, the State Department of Taxation and Assessments and Sweeney dating from January 1993 thru 1994

prior to the trial in the District Court. The entire scope of this correspondence and Sweeney's defense in the District Court revolved around his insistence to be informed of the statutory authority for the State to levy or impose a personal property tax on his dental equipment and for the City to collect the same. Having read the testimony wherein the City offered prima facie proof of the failure of Sweeney to declare his personal property, his failure to appear in Tax Court, his failure to pay the taxes due and owing and having considered his memoranda filed in this Court, there is no question that the decision of the District Court Judge is correct. There is substantial evidence to support the trial court's determination and this Court may not and will not substitute its judgment for, or disturb the finding of, the District Court. cf Ryan v. Thurston 276 Md. 390.

It is, therefore, this 30th day of January, 1996, ORDERED that the judgment of the District Court be and is hereby AFFIRMED."

vi. **MAYOR AND CITY COUNCIL OF BALTIMORE**
Plaintiff

v.

KEVIN P. SWEENEY
Defendant

Case No. 28597-94

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State of Maryland District Court

February 23. 1995

[ORDER denying MOTION FOR RECONSIDERATION]

"MOTION FILED; NOTICE OF OUTCOME:
THE COURT, HAVING RECEIVED THE MOTION FOR RECONSIDERATION DENIES THE MOTION."

vii. **MAYOR AND CITY COUNCIL OF BALTIMORE**
Plaintiff

v.

KEVIN P. SWEENEY
Defendant

Case No. 28597-94

State of Maryland District Court

February 23. 1995

[ORDER denying MOTION FOR NEW TRIAL & ALTER OR AMEND]

"MOTION FILED: NOTICE OF OUTCOME
THE COURT, HAVING RECEIVED THE MOTION FOR NEW TRIAL & ALTER OR AMEND DENIES THE MOTION.

viii. **MAYOR AND CITY COUNCIL OF BALTIMORE**
Plaintiff

v.

KEVIN P. SWEENEY
Defendant

Case No. 28597-94

State of Maryland District Court

February 7. 1995

[ORDER denying MOTION TO VACATE JUDGMENT]

"MOTION FILED: NOTICE OF OUTCOME
THE COURT, HAVING RECEIVED THE MOTION
TO VACATE JUDGMENT DENIES THE MOTION."

ix. **MAYOR AND CITY COUNCIL OF BALTIMORE**
Plaintiff

v.

KEVIN P. SWEENEY
Defendant

Case No. 28597-94

State of Maryland District Court

January 13. 1995

[Opinion/Judgment]:

"In this case, I've heard the testimony of the witnesses. First Ms. Dixon testified on behalf of the Plaintiff as to her position and dealing with delinquent accounts for tangible personal property. In essence, it would include all but the real estate for a business. The State does the assessment and applies the assessment. The amount is various from each subdivision. It could be one rate in one subdivision and one rate in another. However, the subdivision is required to collect. But they can only collect after the assessment and taxation has verified to them. And so, their function is solely to collect.

"In this case, they are seeking the taxes from '91, '92, '93, and '94 where the ... and they issued their first notice in September ... on September 20th of '93. It was sent to 3416 Wilkens Avenue, It's clear that Mr. Sweeney received it from the volumes of correspondence that he has since supplied. So obviously he got the letter. She got a letter, two pieces of correspondence that she dealt specifically with him. One on March 2 of '94, and one on March 15 of '94 where she responded. But, in essence I find her testimony established her position dealing with delinquent accounts. That, in face, this account has

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been certified to her department by the State, that this money was due and owing, and the sole function of the subdivision in this ... at this time and in this case is to collect the money.

"Any issue dealing with the validity of that assessment is not for here. It should already have been dealt with, and I think that's what Mr. Sweeney's trying to do. And I don't have the authority to do that. There is a Tax Court. There are appeals you can take. As of this point, all the City does is collect the assessment that's been certified by the State. That's all they're doing. And Mr. Sweeney is objecting. He says here today that that property doesn't exist.

"And I guess the biggest question that comes to my mind, and I'm sure that Mr. Sweeney has his reasons, as Mr. Duffy said, all he had to do was write back and say, I don't have any business here dealing with the property. That would have been a twenty-nine at the time, twenty-nine cent stamp. That would have been it. I don't understand why, you know, this has gone to the extreme. Obviously, it has taken up a great deal of your time, as is evident from the motions you filed. A great deal of the City's time. They have an assessor here. They have Ms. Dixon from their delinquent account section. And, you know, sometimes people get an idea in their mind, and the principle totally outweighs the practicality. All that was necessary was a letter - I don't have this property, and as Mr. Duffy said, that would have closed the

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matter. Defendant decided not to do that, for whatever reason he saw fit not to do that. There have been numerous issues raised as to jurisdiction. Judge Shuger already ruled on them, and I agree. Court does have jurisdiction dealing with the collection case which is what this is.

Also, there have been numerous issues raised by the Defendant as to lack of statutory authority to even impose the tax, as well as actual underpinnings of the determination. I don't have the jurisdiction to address those actual underpinnings. Those are something that Mr. Sweeney should have taken up with ... at another jurisdiction, And in that regard, I certainly do believe, and am satisfied the State does have the authority to impose this tax, It did. I think the City has the authority to collect it which it is trying to do. As far as attacking the underpinnings of the assessment, that's not for here. It's another place, another time. It should have been done earlier.

But, in this case, I'm ruling in favor of the Plaintiff. I'm entering the judgment in the amount of the most recently supplied figures which indicate that the total principle due is $14,700.00. The penalty, which would be added with that, as far as the general ... so that $14,700.00 ... that's one, five, oh, three. So that's $16,203.00 for penalty and interest, plus the penalty of $1,503.00. So, in the general figure, I'm including, that is the one thousand, the $16,203.00. figure is for the general ... the total principle and the

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penalty. The interest is $1,503.00. in addition to that, for a total judgment of $17,706.00. Court costs are $18.00. Post judgment interest is at the legal rate. Thank you very much."

x. **MAYOR AND CITY COUNCIL OF BALTIMORE**
Plaintiff

v.

KEVIN P. SWEENEY
Defendant

Case No. 28597-94

State of Maryland District Court

January 4. 1995

[ORDER denying MOTION TO DISMISS]

"MOTION FILED; NOTICE OF OUTCOME
THE COURT, HAVING RECEIVED THE MOTION TO DISMISS DENIES THE MOTION.

xi. **NOTICE OF INTENTION TO DEFEND**

"If you contest the claim or any part thereof, you must file this Notice of Intention to Defend no later than 15 days

after you receive this Summons and be present in court on the trial date. If you do not appear judgment by default of the relief sought may be granted."

"I intend to be present at the trial of this claim and demand proof of the Plaintiff's claim. Explanation of defense: [no statutory authority to assess &/or collect tax; no constitutional authority to assess &/or collect tax; denial of equal protection under the law; assessment is arbitrary; violation of due process; As I have not been afforded any notice, up to this point, of the explanation &/or substantiation of the plaintiff's claim (other than the vague reference to the Tax-Property column of the annotated code of Md) I reserve the right to use any and all other defenses that may, in my opinion &/or decision, be applicable and useful in regards to this matter.]" {8-2-1994} (**NOTE**: the verbiage within the [ ] are the words written by defendant; the other words were preprinted as part of the `summons/notice of intention to defend').

xii. PERSONAL PROPERTY TAX BILLS

(a) July 1, 1991 - June 30, 1992
STATE _____$0.00
CITY _____$2,950.00
(b) July 1, 1992 - June 30, 1993
STATE ----------$0.00
CITY _____$2,950.00

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(c) July 1, 1993 - June 30, 1994
STATE _____$0.00
CITY _____$2,950.00
(d) JULY 1, 1994 - JUNE 30, 1995
STATE _____$0.00
CITY _____$5,850.00

xiii. PAID REAL PROPERTY-TAX BILLS

(a) July 1, 1991 - June 30, 1992
STATE _____$37.80
CITY _____$1062.00
DATE PAID __ 7-18-91
(b) July 1, 1992 - June 30, 1993
STATE _____$39.02
CITY _____$1,096.22
DATE PAID -- 07/17/92
(c) July 1, 1993 - June 30, 1994
STATE _____$40.26
CITY _____$1,131.03
DATE PAID -- 08/27/93
(d) July 1, 1993 - June 30, 1995
STATE _____$40.26
CITY _____$1,121.45
DATE PAID __ 11/30/94

Supreme Court, U.S.
FILED
APR 28 1997
CLERK

No. 96-1534

In The

Supreme Court of the United States

October Term, 1996

KEVIN SWEENEY,

Petitioner,

vs.

MAYOR AND CITY COUNCIL OF BALTIMORE,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Maryland

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Otho M. Thompson*
City Solicitor

William R. Phelan, Jr.
Principal Counsel

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QUESTION PRESENTED

Was the Petitioner denied due process in a suit brought in State court by a local governmental to collect taxes when his challenges to the propriety of the assessment and levy were denied by the trial court, because the Petitioner had failed to avail himself of the statutory procedures provided for challenging a tax decision?

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BRIEF IN OPPOSITION

The Mayor and City Council of Baltimore ("the City"), Respondent, urges that the Petition for Writ of Certiorari to review the judgment of the Court of Appeals of Maryland (denying a writ of certiorari seeking review of a trial court appellate decision) be denied for the reasons set forth below.

STATEMENT OF THE CASE

This case arose when the City filed suit in the District Court of Maryland, a trial court of limited jurisdiction, to collect unpaid personal property tax which had been certified by the State of Maryland's Department of Assessments and Taxation as being owed. In the District Court, the Petitioner sought for the first time to challenge the assessment and levy. His arguments did not prevail because, as the trial judge recognized, the Petitioner had failed to challenge the State's tax assessment and levy in the manner prescribed by State law, which provides a multi-tiered appeal process including judicial review. The trial court entered judgment against the Petitioner for the taxes owed.

After disposition of his post-judgment motions, the Petitioner appealed to the Circuit Court for Baltimore City, a trial court of general jurisdiction, which hears appeals from the District Court. After reviewing the record, the Circuit Court affirmed the decision below. The Circuit court denied a motion to alter or amend the judgment and also found that the Petitioner's six motions to dismiss, filed over two months after the judgments and

one month after the denial of the motion to alter or amend, were moot.

The Petitioner then sought further review from the Court of Appeals of Maryland, which denied his petition for writ of certiorari and his subsequent motion to reconsider. There followed the present petition addressed to this Court.

SUMMARY OF ARGUMENT

This Court should deny the petition for writ of certiorari, because further review is neither desirable nor in the public interest. The judgments below were unreported and have no precedential effect. The case does not involve any important question of federal law which needs to be addressed by this Court.

The Petitioner argues that he was denied due process below, but in fact, the State of Maryland has provided a comprehensive process for the challenging and appealing of tax decisions. The Petitioner simply failed to avail himself of this process. Thus, the case was decided properly below and it does not involve any issue which merits consideration by this Court.

REASONS FOR DENYING THE WRIT

The Court should deny the petition for writ of certiorari, because further review is neither desirable nor in the public interest. The judgments below were announced in unreported opinions, which will have no precedential

effect on any other case. The Court of Appeals of Maryland did not consider it worthy of further review. Moreover, the courts below did not decide any important federal question of first impression which has not been settled by this Court or which conflicts with this Court's decisions. This case fails to meet any of the criteria for discretionary review by this Court, as set forth in Rule 10.

There is really no unsettled issue of federal law involved in this case. The Petitioner's main contention seems to be that he was not successful in presenting his defenses and challenges to the levying of the tax in the court action to collect the tax. This argument fails to acknowledge that the State of Maryland has provided a detailed and comprehensive scheme for the challenging of tax decisions made by the government.

Annotated Code of Maryland, Tax-Property Article (hereafter "T-P Art."), §6-101(a) states that " . . . all property located in this State is subject to assessment and property tax and is taxable to the owner of the property." T-P Art., §6-201 provides that the State may impose State property tax on the assessment of property; similarly, under T-P Art., §6-202, the City and counties may impose property taxes on the assessment of property.

T-P Art., §11-101(a) states:

> On or before April 15 of each year, a person shall submit a report on personal property to the Department [of Assessments and Taxation] if:
>
> * * *

(3) the person:

(i) does business in the State or in the preceding taxable year did business in the State; and

(ii) owns or during the preceding taxable year owned property that was assessed for property tax purposes.

The Petitioner began his resistance to being taxed by failing to make his report and questioning the Department as to their authority to require reports and to assess property.

Maryland statutes provide a comprehensive method for challenging an assessment made by the Department. T-P Art., §14-504 states:

(a) *In general.* – For personal property assessed by the Department, any taxpayer, a county, a municipal corporation, or the Attorney General may submit a written appeal to the Department as to a value or classification in a notice of assessment on or before 45 days from the date of the notice.

(b) *Hearing required.* – If the requirements of subsection (a) of this section are met, the Department shall hold a hearing as provided under §14-510 of this subtitle.

T-P Art., §14-512(a) provides administrative review of property tax decisions by the Department as follows:

(a) *From property tax determinations by the Department.* – Any taxpayer, the governing body of a county, a municipal corporation, or the Attorney General may appeal a final action by the Department on an appeal under §14-504 or

> §14-505 of this subtitle to the Maryland Tax Court. The appeal shall be made on or before 30 days from:
>
> (1) the date of the final action of the Department; or
>
> (2) the earlier of the date of delivery or mailing of the notice of the final action to the address specified under §14-507 of this subtitle, if a request is made under §14-507 of this subtitle.

The Maryland Tax Court is an administrative body which has the following jurisdiction:

> (a) *In general.* – The Tax Court has jurisdiction to hear appeals from the final decision, final determination, or final order of a property tax assessment appeal board or any other unit of the State government or of a political subdivision of the State that is authorized to make the final decision or determination or issue the final order about any tax issue, including:
>
> (1) the valuation, assessment, or classification of property;
>
> (2) the imposition of a tax;
>
> (3) the determination of a claim for refund;
>
> (4) the application for an abatement, reduction, or revision of any assessment or tax; or
>
> (5) the application or an exemption from any assessment or tax.

Md. Code, Tax-General Article, §3-103(a). The Tax Court is authorized by statute to decide questions of law which affect appeals:

> (a) A party may submit to the Tax Court a request for a ruling on a question of law that is material to the appeal.
>
> (b) On a request submitted under subsection (a) of this section, the Tax Court may:
>
> (1) issue a ruling on the question of law;
>
> (2) modify the question submitted by a party and issue a ruling on the modified question; or
>
> (3) decline to issue a ruling.

Tax-General Art., §13-525. Thus, the Tax Court is fully authorized to decide questions of law, contrary to the Petitioner's arguments.

The statutory scheme also provides for judicial review in Tax-General Art., §13-532(a), which states:

> (a) (1) A final order of the Tax Court is subject to judicial review as provided for contested cases in §§10-222 and 10-223 of the State Government Article.
>
> (2) Any party to the Tax Court proceeding, including a governmental unit, may appeal a final order of the Tax Court to the circuit court.

In addition, T-P Art., §14-513 states, "Any party to a Maryland Tax Court proceeding may appeal a final decision of the Maryland Tax Court to the circuit court for the county in which the property is located." And T-P Art., §14-515 provides for an appeal from "a final decision of the circuit court to the Court of Special Appeals." Thus, by statute Maryland provides that a person aggrieved by an assessment, a levying of a tax or any other tax decision

may appeal to the Department of Assessments and Taxation, then to the Maryland Tax Court, then to the Circuit Court for the county in which the property is, then to the Court of Special Appeals of Maryland. After that, further review could be available by writ of certiorari issued by the Court of Appeals of Maryland. The appeal process is quite comprehensive, with two levels of judicial review. Certainly, it cannot be said that the State has not provided due process for persons who wish to dispute property tax decisions.

The Petitioner did not avail himself of any of his available remedies and he subsequently received bills from the City for personal property tax, which he did not pay. The bills were based on the assessments made by the State. The City brought suit to collect the moneys owed, pursuant to T-P Art., §14-866. That action in the District Court of Maryland was governed by T-P Art., §14-869, which states:

> (a) *Time of trial.* – If the plaintiff in an action under §14-866 of this subtitle requests, the case shall be brought to trial as soon as the case is at issue, and shall have precedence over all other civil cases.
>
> (b) *Certificate of collector is prima facie evidence.* – (1) in an action under §14-866 the certificate of the Comptroller or of the collector of any county or municipal corporation showing the amount of tax due with all penalties and interest:
>
> > (i) is prima facie evidence to entitle the plaintiff to judgment for the amount of the tax, penalty, and interest; and

> (ii) shall give the defendant the burden or proving that the tax has been paid or any other sufficient defense.
>
> (2) This section does not permit the defendant to use a defense that the defendant might have raised by way of appeal from the assessment on which the tax was imposed.

Section 14-869(b)(2) makes it quite clear that the statutory methods for appealing or challenging tax decisions are intended to be the exclusive way to challenge the propriety or validity of a tax decision. The suit to collect unpaid tax is intended solely to deal with questions relating to the amount claimed and whether it was paid or otherwise discharged.

In the present case, the District Court judge properly followed T-P Art., §14-869 and ruled that she lacked jurisdiction to rule on those defenses which should have been raised in the statutory appeal process described above. Likewise, the Circuit Court was correct in affirming the trial court's judgment. The District Court clearly had jurisdiction to rule on the merits of the collection case and the City presented a *prima facie* case by introducing the certificate of the collector. T-P Art., §14-869(b), *supra*.

While complex on its surface, this case is really quite simple. The Petitioner disagreed with the propriety of his property's being assessed and taxed. He failed to avail himself of the procedures established by the State for a person to challenge a tax decision. He now complains that he was denied due process, but the administrative and judicial forums for pursuing his arguments were clearly available to him. In essence, the Petitioner denied

himself due process by ignoring the prescribed methods for pursuing his challenges.

Accordingly, the Petitioner has not raised any important, unsettled question which warrants review by this Court. The case was decided properly below and it does not merit the attention of this Court.

CONCLUSION

For the reasons set forth above, the Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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(3)

Supreme Court, U.S.
FILED
MAY 22 1997
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Number - 96-1534

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Supreme Court of the United States
October Term, 1996

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Kevin P. Sweeney
(Petitioner)
v.
Mayor & City Council of Baltimore
(Respondent)

==========

On Petition For Writ of Certiorari
To the Court of Appeals of Maryland
(On Appeal from the Circuit Court)
(On Appeal From the District Court)

==========

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

==========

Kevin P. Sweeney (pro se)
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30 pp

QUESTIONS PRESENTED

I. If Petitioner's allegations, as presented to this Court in his original PETITION FOR WRIT OF CERTIORARI (and as were brought before the court which heard the case and the courts which reviewed the case upon appeal) are incorrect, then why didn't the Attorneys for Respondent:

1. state they are incorrect; and
2. support their contentions by citing the pertinent parts from the record of the original proceeding, which, allegation by allegation, show that the asserted allegations are incorrect?

II. Are the Attorneys for Respondent trying to pull a `con job' on the members of this Court by fraudulently (?) citing, as justification for their position, statutes which not only do not apply to "personal property" taxes but are also unconstitutional?

III. How can the Attorneys for Respondent claim that the preservation of the integrity of the provisions of U.S. Constitution and the Maryland State Constitution is not in the public interest, especially since they have (presumably) taken the constitutionally required oath to uphold the Constitution of the United States and the constitutionally required oath to uphold the Constitution of the State of Maryland?

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CONSTITUTIONAL AND STATUTORY PROVISIONS

I. CONSTITUTION OF THE UNITED STATES OF AMERICA:

i. Article III, §1: The Judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

ii. Article III, §2: **The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution,** the Laws of the United States, and Treaties made, or which shall be made, under their Authority; .... (pertinent part highlighted)

iii. Article VI, Clause 2: **This Constitution,** and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any States to the Contrary notwithstanding.** (pertinent part highlighted)

iv. Article VI, Clause 3: The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and **all executive and judicial Officers, of both the United States and of the several States, shall be bound by Oath or**

Affirmation, to support this Constitution; .... (pertinent part highlighted)

v. Amendment XIV, §1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.** (pertinent part highlighted)

II. CONSTITUTION OF THE STATE OF MARYLAND, DECLARATION OF RIGHTS:

i. Article 2: **The Constitution of the United States,** and the Laws made, or which shall be made, under the authority of the United States are, and **shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby; anything in the Constitution or Law of this State to the contrary notwithstanding.** (pertinent part highlighted)

ii. Article 8: That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.

iii. Article 20. That the trial of facts, where

they arise, is one of the greatest securities of the lives, liberties and estate of the People.

iv. Article 44: That the provisions of the Constitution of the United States, and of this State, apply, as well in time of war, as in time of peace; **and any departure therefrom, or violation thereof,** under the plea of necessity, or any other plea, **is subversive of good Government, and tends to anarchy and despotism.** (pertinent part highlighted)

III. CONSTITUTION OF MARYLAND, ARTICLE 1, SECTION 9: Every person elected, or appointed, to any office of profit or trust, under this Constitution, or under the Laws, made pursuant thereto, shall, before he enters upon the duties of such office, take and subscribe the following oath, or affirmation: I, ..., do swear, (or affirm, as the case may be,) that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of ....., according to the Constitution and Laws of this State, ...

IV. MARYLAND STATUTORY PROVISIONS:

A) Tax-Property Article, Annotated Code of Maryland: (listed by Title-Section, but referred to as "section" throughout the code); [note: the first digit of the

'Section' number is the "subtitle" referred to in the statutes.]

i. §14-865; "**Duty to request action.**

(a) *In general.*- Except as otherwise provided in subsection (b) of this section:

(1) **if a tax** under this article is not paid when due to the State, the Governor, the Comptroller, of the Treasurer shall request the Attorney General to institute an action against the person responsible for the tax: and

(2) **if a tax** under this article is not paid when due to a county or municipal corporation, the collector shall request the attorney for the county or municipal corporation to institute an action against the person responsible for the tax.

(b) *Exceptions.* - An officer of the State, a county, or municipal corporation is not required to request the action under subsection (a) of this section if:

(1) the taxes are sufficiently secured by a lien on real property under this title; or

(2) it is certain that no part of a judgment in the action would be collectible."

ii. §14-866. "**Duty to initiate action; compromise of claim.**

(a) *Duty to initiate suit.*- If a request is made under §14-865 of this subtitle, the Attorney General or attorney requested to initiate an action shall initiate the action.

(b) *Compromise of claim.*- If the Attorney General and the Treasurer, or the collector, the chief fiscal officer, and the attorney of the county or municipal corporation agree that the full amount of the claim would be uncollectible, the Attorney General or attorney may;

(1) compromise the claim;
(2) accept a lesser amount on behalf of the collector or State Treasurer; and
(3) issue a release of the claim or satisfaction of the judgment.

iii. Following §14-1103 of the 1986 edition of the Tax-Property Article:

GENERAL REVISOR'S NOTE TO ARTICLE

Structure of the Article:

In organizing this revision of the tax laws of the State, the Commission to Revise the Annotated Code decided to arrange the tax laws in 2 articles, Tax-Property and Tax-General. **The Tax-Property Article is divided into 14 titles and incorporates all of the provisions concerning the valuation and assessment of real and personal property, the imposition of taxes and exceptions to taxes, the granting of credits, the payment and reporting requirements,and finally the procedural provisions.** Although there is a definite sequence from the valuation of property through the appeal and penalty process, the Commission decided to treat all of the steps in the process through the point at which the tax is due in the appropriate substantive title. Therefore, the Tax-Property Article is structured to place the administrative provision first, followed by the substantive provisions and the procedural provisions. **Title 14, Procedure, includes all events that take place after normal payment in full by the taxpayer,** i.e., the enforcement, appeals, interest, penalties, and collection provisions, as well as the provisions related to tax sales, refunds, and limitations. (emphasis added)

Terminology:

It is a precept of the Commission to Revise the Annotated Code to revise the law in a clear, straightforward manner, and, once something is said, to say it the same way every time it is said. To that end, in revising this article, the Commission has conformed the language and organization of this article to that of other revised articles, to the extent that the former law allowed.

Throughout the former law, the word "levy" was used in 4 different senses. It was used as a verb to mean imposing a tax and setting a tax rate. As a noun "levy' was used to mean the imposition of a tax and a lien against property. To avoid confusion in this article, the more precise references to "imposing" a tax, "setting" a tax rate, "imposition" of a tax, and "lien" are used. {emphasis added}

B) Tax-General Article, Annotated Code of Maryland: (listed by Title-Section, but referred to as "section" throughout the code); [note: the first digit of the `Section' number is the "subtitle" referred to in the statutes.]

i. Following §13-1104 of the 1988 edition of the Tax-General Article:

GENERAL REVISOR'S NOTE TO ARTICLE

As a result of an intensive analysis of the tax laws of the State, the Tax-General Article Review Committee has organized the tax laws into 2 revised articles, the Tax-Property Article and the Tax-General Article. The Tax-Property Article was enacted in 1985.

Structure of Article:

The Tax-General Article is divided into 13

titles and encompasses the following general taxes: (1) admissions and amusement tax; (2) alcoholic beverage tax; (3) boxing and wrestling tax; (4) death taxes (inheritance tax, Maryland estate tax, and tax on commissions); (5) franchise taxes (the financial institution franchise tax, which combines the former financial institution and savings bank and savings and loan associations taxes, the public service franchise tax, which formerly was designated the gross receipts tax, and the savings and loan association franchise tax); (7) income tax; (8) the sales and use tax, which combines the former retail sales and the former use taxes; and (9) tobacco tax.

The Tax-General Article Review Committee decided to arrange the article into 3 major areas of tax law - i.e., administrative provisions, substantive provisions, and procedural provisions. A similar structure was adopted for the Tax-General Article.

***

Terminology.

It has been a precept that the revision of this law should be clear and straightforward and, once something is said, it should be said in the same way every time. To that end, in revising this article, the Tax-General Review Committee has conformed the language and organization of this article to that of other revised articles, to the extent that the former law allowed.

Throughout the former law, the word "levy" was used in 4 different senses. It was used as a verb to mean imposing a tax and setting a tax rate. As a noun "levy' was used to mean the imposition of a tax and a lien against property. To avoid confusion in this article, the more precise references to "setting" a tax rate and "imposition" of a tax and "lien" are used. {emphasis added}

ARGUMENTS

I. Petitioner feels the answer to the first question is obvious. That is, the Attorneys for Respondent can't support their position from the evidence and proceedings as they appear "on the record". For instance, no **Baltimore City** statute imposing the alleged property tax was ever identified. (More on this in #2, page 6 of this section.) The question is: Can any government agency arbitrarily and capriciously assess and collect an alleged tax in the absence of an identified statute which clearly "imposes" such a tax? Petitioner has often stated the following sequence of lawful principles in his attempts to prevent the collection of the alleged property tax:

a. In the absence of a statute "imposing" a tax, there is no tax. (As put succinctly by the highest court of Maryland, using a quote from the supreme Court,:

> "And as to tax statutes, too, the Supreme Court has repeated what has often been said by other courts, that `it may be conceded that no tax can be levied without the express authority of law',". *Shell Oil Co. v. Brownley* 181 Md. 8 [1942])

b. In the absence of a statute imposing a tax,
   1) Petitioner is not established as being a "taxpayer" and
   2) there is no liability on the part of the Petitioner to the Respondent for the alleged tax.

c. In the absence of a liability to the Respondent, Respondent is not injured.

d. Having no "injury", Respondent has no "cause of action" and has no standing in any court

in regards to this matter.

e. In the absence of standing on the part of Respondent, NO court can have `jurisdiction´ and the case should have been immediately dismissed for lack of jurisdiction. (Which is what Petitioner has asserted from the very beginning.)

The above, by itself, gives this Court a more than sufficient legal basis to dismiss this case with prejudice for lack of jurisdiction with a finding of lack of substantial justification. Still, Petitioner is compelled to go further and provide the following `food for thought´ to hopefully enlighten the members of this Court to the chicanery Petitioner has been subjected to in asserting his rights. (This chicanery being perpetrated by the judges of the courts below, the present Attorneys for Respondent and the governmental actors of both Respondent and the State of Maryland.) The Attorneys for Respondent have presented no substantiation, from the record, for their position. Still, a few things they did offer must be commented on; for Petitioner wonders if by offering these things the Attorneys for Respondent are being fair to the principle of "justice" and/or are being disrespectful to this Court by trying to perpetrate a "smoke and mirrors" act on its members. Cases in point follow.

1. Petitioner has consistently and continuously asked "What statute imposes the alleged tax"; but has <u>never</u> questioned the authority of Respondent to "impose" a property tax. Just the opposite is true. During his closing argument (transcript page 72, line 7), Petitioner stated:

> "The power of the [Respondent] to have such a tax is not denied. However, [Respondent] has

> not shown any ordinance ... where the [Respondent] **HAS** enacted and imposed such a tax. Everything that the [Respondent], which is the City of Baltimore, has presented is **Maryland law.**"
>
> "The power to tax was subdelegated to Baltimore. This takes the State of Maryland out of the taxing authority, and it is given to Baltimore City. If there is to be a legitimate tax, and an exaction thereof, it must be according to the ordinances and the dictates of Baltimore City."
>
> "In the absence of this, which has not been specified, and the Court has not specified, this is an attempt to exact a tax for which there is no specified, determined, and stated statutory liability."

Since Petitioner admitted, in open court, that Respondent does have the authority to "impose" a property tax, why did the Attorneys for Respondent tell a lie(?) and state: "The Petitioner's main contention (NOTE: Petitioner's main contention, correctly stated is: Petitioner was DENIED presenting his defenses!) seems to be that he was not successful in presenting his defenses and challenges **to the levying of the tax** in the court action to collect the tax." Was it an attempt to influence this Court against Petitioner? Also, why do the Attorneys for Respondent continuously and exclusively use the word "levy" instead of the legally appropriate word "impose"? Could the reason be that the word "levy" was used in 4 different senses in the Md. Code and thus the Attorneys for Respondent are hoping that the members of this Court will inadvertently use the incorrect one and thus "confuse" this case? (The Md. Code was changed to

prevent this. See "Terminology", as used in the Tax-Property and Tax-General volumes of the Md. Code; found at pages `x´ and `xi´.)

Also, it should be noted well that the Attorneys for Respondent have not presented a single argument which addresses any of the specific "QUESTIONS PRESENTED" by Petitioner in his PETITION FOR WRIT OF CERTIORARI. Rather, they state "The Petitioner´s main contention seems to be that he was not successful in **PRESENTING** his defenses"; but make no claim nor cite anything from the record showing that Petitioner **WAS ALLOWED** to present his asserted defenses. (Instead, they present a supposed "comprehensive scheme for the challenging of tax decisions" which they would have this Court believe Petitioner should have followed. In `II´, page 9, this will be shown to be incorrect.) **The Attorneys for Respondent do not deny that Petitioner WAS denied due process!** The following 4 citations will not only show that Petitioner was denied due process because he was not allowed to present his defenses but also because Petitioner was denied "equal treatment under the law" since the courts below did not follow the lawful and righteous principles laid down by this Court and by the highest court in Maryland. The citations are:

> i) "However, the decisions of the board are reviewable, not only when there has been an erroneous interpretation of the law, but also when they impair personal or property rights by reason of an arbitrary or unlawful exercise of discretion." *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296, 304 {1946}.

ii) "We think that the asserted defense that the

payments were gifts, if substantiated, would constitute a valid and meritorious defense. *** Since the trial court appears to have proceeded upon a contrary view of what would constitute a valid defense, we think that the denial of an opportunity to present the defense here asserted resulted in an abuse of the court's discretion ..." *J.B. Corporation v. Fowler* 258 Md. 432,435 [1970], (quoting from Ryan v. Johnson, 220 Md. 70 (pertinent part emphasized)

iii) "A defendant who has been denied an opportunity to be heard in his defense has lost something indispensable." *Snyder v. Mass*, 291 U.S. 97,116 {1932}.

iv) "If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given." *Morgan v. United States* 298 U.S. 468, 480 {1936}

2. Following Petitioner's closing argument, John C. Mayden, then counsel for Plaintiff and now one of the Attorneys for Respondent, stated in his rebuttal argument:

"This abuse and misuse of ordinances is just rattling at my municipal background. Ordinances are local. They are promulgated by the Council. There is exclusive ... exclusive, as in sole, jurisdiction with respect to this matter regarding establishing the tax here with the legislature, and it is codified in the Annotated Code of Maryland. *** So, to put it succinctly, ordinances have nothing to do with this. It is the State of Maryland and that Annotated Code,

> and so to come forward with all of this about what the Council did and those kind of things, really are off the point, and it confuses the issue." (Court transcript, page 77, line 4)

Compare this to what the Attorneys for Respondent now say in their BRIEF IN OPPOSITION. (page 3, line 21). That is:

> "similarly, under T-P Art., Section 6-202, **the City** and counties **may impose property taxes** on the assessment of property."

Not only is the word "impose" in there, but this citation is exactly the opposite of what Mr. Mayden told the District Court! Two very important questions come to mind:

A) First, and most importantly, since the Attorneys for Respondent now admit that Respondent CAN "impose" a property tax, why haven't they quoted, from the record, the statute which imposed the alleged tax? The answer is very simple: **NONE WAS EVER IDENTIFIED!**

B) Why did Mr. Mayden tell an untruth to the Judge in the District Court?;

3. The Attorneys for Respondent state: "The Petitioner began his resistance to being taxed by failing to make his report and questioning the Department as to their authority to require reports and to assess property". This is an untruth. Petitioner asked for the authority of the Department to require **HIM** to submit reports and to assess any of **HIS** property. There may in fact be an authority for the Department to require reports to be

submitted and to assess property; but if Petitioner and/or his property do not fall within the legal requirements, then the Department is attempting to act beyond its scope of authority. Petitioner has never admitted that any alleged "taxable personal property" exists; and to repeat from page 21 of Petitioner's PETITION FOR WRIT OF CERTIORARI:

> "The Dept. A/T admits that it has **no knowledge** of the existence of the alleged taxable personal property. The Dept. A/T further admits that upon direct investigation, **its own investigator found no taxable property.**"

In the absence of any property, there can be no requirement to file a report. Thus, there being no facts establishing the existence of the alleged property, how can the Attorneys for Respondent justifiably claim that the Petitioner **failed** to make his report? Likewise, how can there be a lawful assessment and/or taxation of non-existent property?

4. The Attorneys for Respondent state (page 7, line 15 of their BRIEF):

> "The City brought suit to collect the moneys owed, pursuant to T-P Art., §14-866. That action in the District Court of Maryland was governed by T-P Art., §14-869, which states:
>
> '(a) *Time of trial.* - If the plaintiff in an action under §14-866 of this subtitle ....'."

The provisions of §14-869 clearly depend upon "an action under §14-866". But the Attorneys for Respondent do not provide this Court with the provisions of §14-866. **WHY NOT?!** Could it be to

prevent this Court from realizing that the original "action" of Respondent was unlawful? §14-866 states:

> (a) *Duty to initiate suit.* - If a request is made under §14-865 of this subtitle, ..." (For entire text, see item `ii', page ix.)

The provisions of §14-866 depend upon §14-865. Both §14-865 (a) and (b) start with the phrase "**if a tax** under this article is not paid". (For entire text, see item `i', page viii). It has been shown in argument `I' above that no "tax" has been shown to exist. Thus, an "action" against Petitioner cannot be justly instituted under §14-865. It naturally follows that no "action" under §14-866 or §14-869 can be justly sustained since they are dependent upon an action instituted under §14-865. The Attorneys for Respondent accurately presented the provisions of §14-869. But in presenting this "truth", didn't they fail to "tell the whole truth" when they very conveniently failed to provide this Court with the provisions of another section upon which §14-869 depends? Is this an attempted "con-job" on the members of this Court?

Additionally, it should be well noted that T-P §14-869, the very section the Attorneys for Respondent attempt to use as a basis for their position, (middle of page 7, BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI), contains a provision which deals them a knockout punch. That is, §14-869(b)(ii) states:

> "(ii) shall give the defendant the burden of proving that the tax has been paid OR

ANY OTHER SUFFICIENT DEFENSE."

The Attorneys for Respondent, and the current judge/s in the court/s below, apparently want to ignore this provision and/or hope that it goes away. It is clear that the legislature of Md. recognizes defenses other than `the tax bill is paid´. So does, (or at least, did), the highest court in Md. (See the two citations in item `A.(i)´, page 14 of PETITION FOR WRIT OF CERTIORARI) Petitioner attempted to offer such `sufficient defense/s´ but was denied the opportunity to present them. So much for "equal treatment under the law"! So much for "due process"!

II. The Attorneys for Respondent cited several sections of the Tax-General Article (as opposed to the Tax-Property Article) to supposedly support their position. What the Attorneys for Respondent neglected to tell this Court is the fact that the Tax-General Article contains no provision relating to "personal property" and hence **HAS NO APPLICABILITY TO THIS CASE.** This is evident by the language found in the Tax-General volume itself. "**Structure of Article**", (see CONSTITUTIONAL & STATUTORY PROVISIONS; item IV,B,i; page x) states:

> "The Tax-General Article is divided into 13 titles and encompasses the following general taxes:".

It then goes on to list 9 types of taxes; "PROPERTY TAX" IS NOT INCLUDED!

Compare the above to the language of the analogous part of the Tax-Property Article. (i.e. - "**Structure of Article**"; see CONSTITUTIONAL &

STATUTORY PROVISIONS, item IV,A,iii; page ix). It states:

> " ... The Tax-Property Article is divided into 14 titles and **incorporates ALL of the provisions concerning the valuation and assessment of real property, the imposition of taxes ... and finally the procedural provisions.**". (emphasis and highlights added).

In reference to the procedural provisions, it continues:

> "Title 14, Procedure, **includes ALL events that take place after normal payment in full by the taxpayer, i.e., the enforcement, APPEALS, ...**". (emphasis and highlights added)

The Tax-General Article itself states that it does not apply to "property taxes"; and the Tax-Property Article states that "Title 14, Procedure, includes **ALL** ..." of the provisions relating to "appeals". So:

1. Why did the Attorneys for Respondent relate the Tax-General statutes to this Court?; and
2. Why do they try to use these inapplicable statutes as their basis for stating that "The Petitioner did not avail himself of any of his available remedies."?

After all, it's not nice to lie or mislead or tell untruths to the supreme Court. (It's also not ethical, fair, or legal; not to mention violative of Petitioner's rights and violative of their oaths to uphold the constitutions. [U.S. Const. Art. VI, Cl 3

& Md. Const. Art. 1, §9; see item `iv´, page vi and item `III´ page vii.])

But telling this Court "The Tax Court is authorized by statute to decide questions of law", and then citing the Tax-General Article as the alleged authorization is disingenuous. **Such a statute is unconstitutional under the provisions of the Maryland Constitution.** A citation from the highest court in Maryland will demonstrate this:

> "There are many respects in which the Maryland Tax Court lacks the characteristics normally associated with an entity exercising judicial authority. However, regardless of this, the Tax Court cannot be deemed to exercise initial judicial authority for a more fundamental reason. Under the Maryland Constitution, unlike the federal Constitution, the judicial function may be exercised only by those courts enumerated in the Constitution. With the exception of the express authorization to create intermediate courts of appeal, the General Assembly of Maryland, unlike the Congress, is not empowered to create additional "courts" to exercise judicial power.
>
> "That the judicial power of the State of Maryland is vested only in those courts enumerated by the Maryland Constitution is made clear by Art. IV, section 1:
>
> > `The judicial power of this State shall be vested in a Court of Appeals, and such intermediate courts of appeal, as shall be provided by law by the General

> Assembly, Circuit Courts, Orphans' Courts, such Courts for the City of Baltimore, as are hereinafter provided for, and District Court; all said Courts shall be Courts of Record, and each shall have a seal to be used in the authentication of all process issuing therefrom.'

"This Court has consistently held that under Art. IV, section 1, of the Constitution, the judicial function may not be exercised by entities other than those courts described in the Constitution. As stated in *Dal Maso v. County Commrs.*, 182 Md. 200, 205, 34 A.2d 464, 466 (1943):

> 'In this State, all judicial authority is only such as is provided for by Article 4 of the Maryland Constitution, and it has been decided that only judicial functions can be exercised which find authority in that Article..., and that no court not coming within its provisions can be established in this State. **This forbids any power in the Legislature to clothe administrative boards with any judicial authority.** There may be states in which it can be done, but Maryland is not one of them.'" *Shell Oil Co. v. Supervisor* 276 Md. 36,44 [1975] (emphasis added)

Continuing at page 46:

> "Moreover, Article 8 of the Declaration of Rights of the Maryland Constitution provides:

> 'That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.'

> "This Court has consistently stated that Article 8 prohibits the courts from performing nonjudicial functions and prohibits administrative agencies from performing judicial functions."

It is bad enough that the Md. legislature has passed a flagrantly unconstitutional statute as part of the Tax-General Article (i.e.- §13-525). It is another thing for the Attorneys for Respondent to try to influence this Court by citing such an unconstitutional statute as substantiation for their position. It is still another thing, and highly despicable and fraudulent in the opinion of Petitioner, for the presiding judge of the original proceedings to hold that Petitioner should have "appealed" his questions OF LAW to the Tax Court and worse yet that this was upheld by the judges of the higher courts on appeal. This seems like a very propitious time for this Court to remind/inform all the judges and legislators of Maryland of the opinion of the Md. Court of Appeals regarding this matter. That is:

> " ... this Court, in a long line of cases, has consistently held that the Legislature CANNOT divest the courts of the inherent power they possess to review and correct

> actions by an administrative agency which are ARBITRARY, ILLEGAL, capricious or unreasonable." *Criminal Injuries Comp. Board v. Gould* 273 Md. 486,500 [1975] (emphasis added)

III. (a) The Attorneys for Respondent contend that "review is neither desirable nor in the public interest"; but having stated this offer nothing to support it. Petitioner on the other hand has dealt with this subject rather extensively in his "PETITION". Petitioner directs this Court to item (B), page 9, of Petitioner's PETITION FOR WRIT OF CERTIORARI for that write-up.

(b) The Attorneys for Respondent state this "case does not involve any important question of federal law" and that it "fails to meet any of the criteria for discretionary review by this Court, as set forth in Rule 10". The federal law involved is the U. S. Constitution, the "Supreme Law of the Land". (U.S. Const. Art 6, Cl 2 & Md. Const. DR Art. 2; item `iii', page v and item `i', page vi). The apparent `criteria' referred to are not exclusive of others. Rule 10 states so itself. That is: "... The following, although **NEITHER CONTROLLING NOR FULLY MEASURING THE COURT'S DISCRETION** ...." (emphasis added)

Petitioner has alleged, and documented, that he was denied "due process of law" as protected by the U.S. Constitution, Amendment 14, §1. **THIS IS THE FIRST OPPORTUNITY AT WHICH PETITIONER CAN AVAIL HIMSELF OF SUCH AN ALLEGATION.** The principle is stated by the supreme Court thusly:

> "But the violation of the constitutional provisions [of the 14th amendment], when

> made by the judicial tribunals of a State, may be, and generally will be, after the trial has commenced. It is then, during or after the trial, that denials of the defendant's right by judicial tribunals occur. Not often until then. Nor can the defendant know until then that the equal protection of the laws will not be extended to him. **CERTAINLY UNTIL THEN HE CANNOT AFFIRM THAT IT IS DENIED, OR THAT HE CANNOT ENFORCE IT, IN THE JUDICIAL TRIBUNALS.**" *Virginia v. Rives 100 Sup. Ct. 313 [1879]* (emphasis added)

Hence, before Petitioner could justly allege that he was denied due process of law by the State of Maryland, he had to exhaust all methods available to him to procure "due process". All such methods were exhausted when Petitioner filed, and was denied, his MOTION FOR RECONSIDERATION of his PETITION FOR WRIT OF CERTIORARI to the Court of last resort in Maryland. Now, Petitioner can take his case to this Court. This Court has stated not only its ability to use its discretion to ensure that the State courts protect every right granted or secured by the Constitution of the United States but also its apparent desire and dedication to do so. As stated in *Robb v. Connolly* 111 U.S. 624, 637 {1884}:

> "Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them. ***. If they fail therein, and

> withhold or deny rights, privileges, or immunities secured by the Constitution and laws of the United States," **the party aggrieved may bring the case from the highest court of the State in which the question could be decided to this court for final and conclusive determination."** (emphasis added)

The jurisdiction of this court is invoked under 28 U.S.C. section 1257. (Previously stated at page (x) of Petitioner's PETITION FOR WRIT OF CERTIORARI.) The `inherent' power of this Court is stated in U.S. Constitution Art. 3, Sections 1 and 2. (see items `I,i' and `I,ii', page v)

SUMMARY

All of Respondents actions, and also those of all the Government agencies and/or actors upon which Respondent relies, are founded on `maybes', `possibilities', `beliefs' and `innuendo'. To have brought suit against Petitioner, and worse to have entered and upheld a judgment against Petitioner, based upon such `non-factual' items, violates Petitioner's rights as stated in the Md. Constitution Declaration of Rights Article 20. That is:

> "That the trial of **FACTS**, where they arise, is one of the greatest securities of the lives, liberties and estate of the People."

Petitioner has demonstrated that the Attorneys for Respondent have supplied this Court with statutes which are inapplicable to this case and are

unconstitutional as compared to the Maryland Constitution. The words of this Court in *Olmstead v. U.S.* 277 U.S. 438 [1928] come to mind. As a paraphrase: The Court will protect itself. Aid is **DENIED** to he who comes with **UNCLEAN HANDS**.

The Attorneys for Respondent have failed to show that the allegations of Petitioner, stated in his PETITION FOR WRIT OF CERTIORARI, are incorrect. Thus, EACH allegation forms, (and formed for the courts below), a basis for this Court to issue an 'order' dismissing this case with prejudice for lack of jurisdiction with a finding of lack of substantial justification.

Petitioner has also demonstrated the statutory authority and the apparent willingness and desire of this Court to "guard, enforce and protect every right granted or secured by the Constitution of the United States" when a State court fails to do so.

In light of the above, Petitioner feels this is a good time to recall the Md. Constitution Declaration of Rights Article 44. That is:

> "That the provisions of the Constitution of the United States, and of this State, apply, as well in time of war, as in time of peace; and **any departure therefrom, or violations thereof, under the plea of necessity, or any other plea, is subversive of good Government, and tends to anarchy and despotism.**" (emphasis added)

Once the <u>lawful</u> principles are understood and followed, the "summary" can simply and concisely be

stated as:

1. In the absence of a statute "imposing" a tax, there is no tax;
2. Petitioner has shown that the single "QUESTION PRESENTED" to this Court by the Attorneys for Respondent is founded in neither law nor fact; and
3. This Court has the lawful, constitutional authority and duty to rule on, and dismiss, the action against Petitioner.

CONCLUSION

This court should issue an ORDER dismissing this case with prejudice for lack of jurisdiction with a finding of lack of substantial justification.

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